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5 **IN THE SUPREME COURT**
STATE OF ARIZONA

6 In the Matter of a PETITION) Supreme Court No. R-_____
7 TO AMEND SUPREME)
8 COURT RULE 45) Petition to Amend
_____) Supreme Court Rule 45

9 Pursuant to Rule 28 of the Rules of the Supreme Court, the State Bar of
10 Arizona petitions the Arizona Supreme Court to amend Rule 45 of the Rules of
11 the Supreme Court, as set forth in Appendix A, attached hereto.

12 I. Overview and Summary of Proposed Changes

13 The State Bar of Arizona, a mandatory bar organization, is responsible for
14 the investigation and prosecution of allegations of lawyer misconduct. The
15 State Bar, through its Board of Governors and staff, regularly consider whether
16 the Rules of the Supreme Court should be amended to provide additional
17 protection to the public. The Board of Governors, its Discipline Oversight
18 Committee, and the State Bar staff have, over the years, become concerned
19 about the number of reported trust account violations, and the actual and
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1 potential harm to the public that has resulted from the non-compliance with the
2 trust account rules.¹

3 The 2006 Annual Report of Lawyer Regulation revealed that 10.75% of all
4 disciplinary charges in 2006 were trust account related.² The State Bar
5 investigated 100 trust account charges in 2003 based solely upon insufficient
6 funds notification from banks; in 2004, there were 107 such charges
7 investigated; in 2005, there were 60 such charges investigated; and, in 2006,
8 there were 88 such charges investigated.³ Of the 43 cases in which hearing
9 officers, the Disciplinary Commission and this Court have imposed discipline
10 in 2007,⁴ 16 included violations of the trust account rules. Between 2000 and
11 2006, 184 members attended the Trust Account Ethics Enhancement Program.
12 Only 14 of those members have subsequently violated the trust account rules, a
13 recidivism rate of only 7.6%. Some attendees at the Trust Account Ethics
14 Enhancement Program have inquired why such a program is not mandatory for
15 every member who is required to maintain a trust account.

16 ¹ ER 1.15 and Supreme Court Rules 43 and 44.

17 ² This includes all sources of trust account charges, including insufficient funds notification
18 from banks.

19 ³ During each of those years, the State Bar investigated other charges of trust account
violations, which were received from other sources (e.g., clients, subsequent counsel).

20 ⁴ This figure includes all discipline reported on the Supreme Court's website as of
November 19, 2007.

1 Some instances of non-compliance with the trust account rules are
2 inadvertent, but a number result from members' failure to understand and
3 comply with the trust account rules. The trust account rules are somewhat
4 complex and have practical, administrative implications that are not always
5 readily evident. Mandatory continuing legal education regarding the trust
6 account rules would result in greater compliance with the rules and a reduced
7 incidence of inadvertent violations of the rules.

8 In June 1999, this Court amended Supreme Court Rule 43 to require banks
9 to notify the State Bar whenever a member's trust account has insufficient
10 funds to honor any properly payable instrument. That requirement functions as
11 an "early-warning" system to alert the State Bar whenever a trust account has
12 insufficient funds to pay a check issued on the account or has become
13 overdrawn. Between mid-1999 and the end of 2006, the State Bar opened 749
14 overdraft/insufficient funds investigations. The proposed rule would add
15 another level of protection for the public by educating members about the
16 establishment and administration of trust accounts.

17 Some individuals can recover from the Client Protection Fund when their
18 lawyers steal or knowingly or inadvertently misappropriate client funds. The
19 Client Protection Fund is available, however, only when the harm results from
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1 dishonest conduct⁵ and the lawyer has died, been convicted of a felony related
2 to the claim, or been suspended, disbarred or placed on disability inactive
3 status. In 2006, 34 claims were paid by the Fund, resulting in payments
4 totaling \$230,067.

5 The proposed rule, if adopted by this Court, will require every active
6 member of the State Bar who is engaged in the private practice of law, and
7 who is not exempt by the rule, to complete a course on the establishment and
8 administration of trust accounts presented by the State Bar of Arizona, or a
9 course approved or licensed by the State Bar. Active members of the bar who
10 do not engage in the private practice of law in Arizona would be exempt from
11 completing such a course, except that any such member would be required to
12 complete such a course within 12 months of commencing the private practice
13 of law in Arizona, or in accordance with such other schedule as may be
14 established by the Board of Governors. The proposed rule would require the
15 Board of Governors to establish a schedule of dates by which members would
16 have to complete a trust account course.

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18 ⁵ "Dishonest conduct" includes (1) wrongful acts in the nature of theft or embezzlement of
19 money; or the wrongful taking or conversion of money, property or other things of value;
20 (2) refusal to refund unearned fees received in advance where the lawyer performed no
services or such an insignificant portion of the services that the refusal to refund the
unearned fees constitutes a wrongful taking or conversion of money; and (3) a lawyer's act
of intentional dishonest or deceitful conduct that proximately leads to the loss of money or
property

1 Mandating training regarding trust accounts is not new. Since 1987, the
2 Supreme Court of New Jersey has required every newly admitted attorney to
3 take a course that includes education regarding the trust account rules and the
4 proper administration of trust accounts. Each participant receives a copy of
5 *Trust and Business Accounting for Attorneys*, which was written by the Office
6 of Attorney Ethics.

7 The proposed rule that accompanies this petition was approved by a
8 majority of the Board of Governors. It is the Board's considered opinion that
9 the proposed amendments are appropriate and will serve the interests of the
10 legal profession, the Supreme Court, and the public at large.

11 12 II. Text of Proposed Rule Change

13 The text of the proposed rule change is attached hereto as Appendix A.
14 The changes are shown in legislative format, with additions shown by a double
15 underline. No deletions to the current rule are proposed.

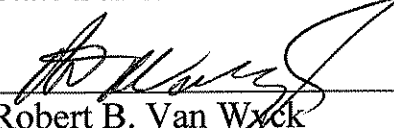
16 17 III. Conclusion

18 For the reasons set forth above, the State Bar of Arizona respectfully
19 petitions this Court to amend Rule 45 of the Rules of the Supreme Court, as set
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1 forth in Appendix A.

2 Respectfully submitted this 5th day of December, 2007.

3 State Bar of Arizona

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5 Robert B. Van Wyck
6 Chief Bar Counsel
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10 Electronic copy filed with the
11 Clerk of the Supreme Court of Arizona
12 this 5th day of December, 2007.

13 by: Kathleen Lundgren
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Appendix A

Rule 45. Mandatory Continuing Legal Education

(a) [No change]

1. – 2. [No change]

3. [No change]

a. – c. [No change]

4. Except as otherwise provided in this rule, every active member of the bar who is engaged in the private practice of law in Arizona, and who is not exempt, shall satisfy the requirements of subsection (a)(2) of this rule, in whole or in part for any educational year, by completing a course on the establishment and administration of trust accounts presented by the State Bar of Arizona, or approved or licensed by the State Bar of Arizona for this purpose.

a. Active members of the bar who do not engage in the private practice of law in Arizona shall be exempt from completing such a course, except that any such member shall complete such a course within twelve (12) months of commencing the private practice of law in Arizona, or in accordance with such other schedule as may be established by the Board of Governors.

b. The Board of Governors shall establish a schedule of dates by which active members of the bar engaged in the private practice of law shall satisfy the requirements of this subsection.

(b) [No change]

1. – 6. [No change]

(c) [No change]

(d) [No change]

1. [No change]

a. – d. [No change]

2. [No change]

a. – c. [No change]

(e) – (k) [No change]